

Crime Victims -- Family Members -- Right to Attend Proceedings -- Exceptions -- Right to Receive Documents -- Rights During Interview

46-24-106. Crime victims' -- family members -- right to attend proceedings -- exceptions -- right to receive documents -- rights during interview. (1) Except as provided in subsection (2), a victim of a criminal offense has the right to be present during any trial or hearing conducted by a court that pertains to the offense, including a court proceeding conducted under Title 41, chapter 5. A victim of a criminal offense may not be excluded from any trial or hearing based solely on the fact that the victim has been subpoenaed or required to testify as a witness in the trial or hearing.

(2) A judge may exclude a victim of a criminal offense from:

(a) a trial or hearing upon the finding of specific facts supporting exclusion or for disruptive behavior; or

(b) a portion of a proceeding under Title 41, chapter 5, that deals with sensitive personal matters of a youth or a youth's family and that does not directly relate to the act or alleged act committed against the victim.

(3) If a victim is excluded from a trial or hearing upon the finding of specific facts supporting exclusion, the victim must be allowed to address the court on the issue of exclusion prior to the findings.

(4) A family member of a victim may not be excluded from a trial or hearing based solely on the fact that the family member is subpoenaed or required to testify as a witness in the trial or hearing unless there is a showing that the family member can give relevant testimony as to the guilt or innocence of the defendant or that the defendant's right to a fair trial would be jeopardized if the family member is not excluded.

(5) As used in this section, "victim" means:

(a) a person who suffers loss of property, bodily injury, or reasonable apprehension of bodily injury as a result of:

(i) the commission of an offense;

(ii) the good faith effort to prevent the commission of an offense; or

(iii) the good faith effort to apprehend a person reasonably suspected of committing an offense; or

(b) a member of the immediate family of a homicide victim.

(6) (a) Except as provided in subsection (6)(c), a victim of a criminal offense has the right to receive, upon request and at no cost to the victim, one copy of all public documents filed in the court file.

(b) If the victim is under 18 years of age, copies provided under subsection (6)(a) must be provided to the victim's parent or guardian instead of to the minor victim.

(c) Subsection (6)(a) does not apply to:

(i) trial transcripts;

(ii) trial exhibits;

(iii) court proceedings conducted under Title 41, chapter 5; or

(iv) documents the prosecutor determines would adversely affect the prosecution if released.

(7) A victim of a criminal offense has the right, upon request, to have a victim advocate present when the victim is interviewed about the offense.

Prompt Notification to Victims and Witnesses Of Certain Offenses

46-24-203. Prompt notification to victims and witnesses of certain offenses. (1) A person described in subsection (2) who provides the appropriate official with a current address and telephone number must receive prompt advance notification, if possible, of proceedings relating to the person's case, including:

- (a) the arrest of an accused;
- (b) the release of the accused pending judicial proceedings;
- (c) the crime with which the accused has been charged, including an explanation of the elements of the offense when necessary to an understanding of the nature of the crime;
- (d) proceedings in the prosecution of the accused, including entry of a plea of guilty or nolo contendere and the setting of a trial date;
- (e) if the accused is convicted or pleads guilty or nolo contendere:
 - (i) the function of a presentence report;
 - (ii) the name, office address, and telephone number of the person preparing the report; and
 - (iii) the convicted person's right of access to the report, as well as the victim's right under 46-18-115 to present a statement in writing or orally at the sentencing proceeding and the convicted person's right to be present at the sentencing proceeding and to have access to the victim's statement;
- (f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of imprisonment, if imposed;
- (g) the right under 46-24-212 of a victim of a felony offense to receive information from the department of corrections concerning the convicted person's incarceration; and
- (h) the right under 46-23-215, 46-23-509, or 46-23-1011 of a victim of a sexual offense, as defined in 46-23-502, to request a sentencing order, condition of parole, or condition of probation to require the convicted person to refrain from direct or indirect contact with the victim.

(2) A person entitled to notification under subsection (1) must be a victim or witness of a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim, a relative of a victim or witness who is a minor, or a relative of a homicide victim.

Services to Victims of Crime

46-24-201. Services to victims of crime. (1) Law enforcement personnel shall ensure that a victim of a crime receives emergency social and medical services as soon as possible and that the victim is given written notice, in the form supplied by the attorney general, of the following:

- (a) the availability of crime victim compensation;
- (b) access by the victim and the defendant to information about the case, including the right to receive documents under 46-24-106;

(c) the role of the victim in the criminal justice process, including what the victim can expect from the system, as well as what the system expects from the victim, and including the right to be accompanied during interviews as provided in 46-24-106; and

(d) stages in the criminal justice process of significance to a crime victim and the manner in which information about the stages may be obtained.

(2) In addition to the information supplied under subsection (1), law enforcement personnel shall provide the victim with written information on community-based victim treatment programs, including medical, housing, counseling, and emergency services available in the community.

(3) As soon as possible, law enforcement personnel shall give to the victim the following information:

(a) the name, office address, and telephone number of a law enforcement officer assigned to investigate the case; and

(b) the prosecuting attorney's name, office address, and telephone number.

THE CONSTITUTION OF THE STATE OF MONTANA
ARTICLE II. DECLARATION OF RIGHTS
Section 36. Rights of crime victims.

(1) To preserve and protect a crime victim's right to justice, to ensure a crime victim has a meaningful role in criminal and juvenile justice systems, and to ensure that a crime victim's rights and interests are respected and protected by law in a manner no less vigorous than the protections afforded to a criminal defendant and a delinquent youth, a crime victim has the following rights, beginning at the time of victimization:

- (a) to due process and to be treated with fairness and respect for the victim's dignity;
- (b) to be free from intimidation, harassment, and abuse;
- (c) to be reasonably protected from the accused and any person acting on the accused's behalf;
- (d) to have the victim's safety and welfare considered when setting bail and making release decisions;
- (e) to prevent the disclosure of information that could be used to locate or harass the victim or that contains confidential or privileged information about the victim;
- (f) to privacy, including the right to refuse an interview, deposition, or other discovery request and to set reasonable conditions on the conduct of any interaction to which the victim consents;
- (g) to receive reasonable, accurate, and timely notice of and to be present at all proceedings involving the criminal conduct, plea, sentencing, adjudication, disposition, release, or escape of the defendant or youth accused of delinquency and any proceeding implicating the rights of the victim;
- (h) to be promptly notified of any release or escape of the accused;
- (i) to be heard in any proceeding involving the release, plea, sentencing, disposition, adjudication, or parole of the defendant or youth accused of delinquency and any proceeding implicating the rights of the victim;
- (j) to confer with the prosecuting attorney;
- (k) to provide information regarding the impact the offender's conduct had on the victim for inclusion in the presentence or predisposition investigation report and to have the information considered in any sentencing or disposition recommendations submitted to the court;
- (l) to receive a copy of any presentence report and any other report or record relevant to the exercise of a right of the victim, except for those portions made confidential by law;
- (m) to the prompt return of the victim's property when no longer needed as evidence in the case;
- (n) to full and timely restitution. All money and property collected from a person who has been ordered to make restitution must be applied first to the restitution owed to the victim before paying any amounts owed to the government.
- (o) to proceedings free from unreasonable delay and to a prompt and final conclusion of the case and any related post judgment proceedings;
- (p) to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the offender, including any scheduled release date, actual release date, or escape;
- (q) to be informed of clemency and expungement procedures; to provide information to the governor, the court, any clemency board, or any other authority and to have that information

considered before a decision is made; and to be notified of any decision before the release of the offender; and

(r) to be informed of the above rights and to be informed that the victim may seek the advice and assistance of an attorney with respect to the above rights. This information must be made available to the general public and provided to all crime victims on what is referred to as a Marsy's card.

(2) A victim, the victim's attorney, the victim's legal representative, or the prosecuting attorney at the request of the victim may assert and seek enforcement of the rights enumerated in this section and any other right afforded to the victim by law in any trial or appellate court or any other authority with jurisdiction over the case as a matter of right. The court or other authority shall act promptly on the request, affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding disposition of a victim's right must be clearly stated on the record.

(3) This section may not be construed to deny or disparage other rights possessed by victims. This section applies to criminal and youth court proceedings, is self-executing, and requires no further action by the legislature.

(4) As used in this section, the following definitions apply:

(a) "Crime" means an act defined as a felony, misdemeanor, or delinquency under state law.

(b) "Victim" means a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime.

(i) The term includes:

(A) a spouse, parent, grandparent, child, sibling, grandchild, or guardian of the victim;

(B) a person with a relationship to the victim that is substantially similar to a relationship described in subsection (4)(b)(i)(A); and

(C) a representative of a victim who is a minor or who is deceased, incompetent, or incapacitated.

(ii) The term does not include the accused or a person who the court believes would not act in the best interests of a minor or of a victim who is deceased, incompetent, or incapacitated.

History: En. Sec. 1, Const. Initiative No. 116, approved Nov. 8, 2016.